

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

6050d

FILE: B-184433

DATE: February 24, 1976

MATTER OF: Magnavox Research Laboratories

98562

DIGEST:

1. GAO agrees that RFP did not necessarily require offerors to submit "maximum" number of spare parts as protester contends since RFP merely required offerors to furnish "recommended" spare parts list.
2. Since procuring agency initially decided it would need all of protester's spare parts in event award was made to company, agency was not obligated under initial decision to afford protester opportunity to reduce number of spare parts.
3. GAO is inclined to view that list of spare parts in awarded contract represents agency's reasonable needs for parts notwithstanding fact that contractor's spare parts are apparently fewer in number than those set forth in recommended list of spare parts prepared by agency's technical committee and those in protester's spare parts proposal.
4. Final award decision reflects agency's view that advantages in protester's technically superior, higher-priced proposal did not outweigh monetary savings inherent in present contractor's proposal. Based on review of record, GAO cannot conclude that agency's view is not rationally founded.
5. Recognizing lack of authority to require contracting agency to submit protest report to GAO by given date, it cannot be concluded that time taken for agency to submit report affects propriety of award. Neither can it be concluded that agency's refusal to confer with protester affects propriety of award even though conference between agency officials and protester might have clarified issues raised.

On July 7, 1975, a protest was received from Magnavox Research Laboratories (Magnavox) against award to any other offeror under request for proposals (RFP) No. 137 issued by the United States Geological Survey, Department of the Interior, for a ship-borne navigation and data management system, and attendant spare parts, to be used in surveying the outer continental shelf and its potential energy resources. Award was to be made on a fixed-price basis.

Magnavox asserted that the Department evaluated the company's prices for the RFP requirement in an "inequitable manner." This inequitable evaluation resulted, in Magnavox's view, from the Department's decision not to allow Magnavox to eliminate some spare parts from the "maximum" list of spare parts and prices which Magnavox submitted with its June 1975 proposal under the RFP. (The RFP, as amended, requested offerors "to furnish their recommended spare parts list with prices" and provided that the "Government prior to award will determine which spare parts to purchase.")

Since it was not allowed to reduce its "maximum" list of parts and prices during negotiations, Magnavox insisted it was thereby necessarily prejudiced by the Department's method of determining the lowest-priced offer, namely: adding offerors' base system prices to their spare parts prices and comparing the total prices computed. Based on review of the aggregate prices, Interior decided to make award to Western Geophysical Company (Western) which submitted an aggregate price (including spare parts prices) of \$544,333 which was lower than Magnavox's aggregate price.

Magnavox further insisted that its price for the basic system, excluding spare parts prices, was less than that submitted by Western. Argument was also made that if it had been given the opportunity to reduce the maximum number of spare parts and prices through negotiation its admittedly technically superior offer might have been accepted.

Interior insists that the RFP provisions in question did not require offers to submit a "maximum" number of spare parts or any established number of spare parts because the agency was unable to define, prior to the closing date for submission of proposals, a "universal spare parts list" which would be common

to all the types of basic systems that offerors might propose. Consequently, Interior's stated intent in drafting the RFP provisions regarding spare parts was to allow each offeror to use its best judgment in proposing a spare parts list for the basic system.

Notwithstanding the stated intent of the drafters of the RFP, the record of evaluation shows that after Magnavox and Western were determined to be the only offerors in the competitive range, Interior did on June 19, 1975, attempt to "normalize" (evaluate on an equal basis) offerors' spare parts proposals. The attempt was initiated by the contracting officer who asked Interior's technical evaluation committee to make a comparative analysis of the spare parts proposed by Magnavox and Western.

By memo of June 25, 1975, the committee advised the contracting officer that, although it was difficult to make an exact comparison of the spare parts proposals because of "differences in nomenclature and systems design," Magnavox's spare parts proposal was considered superior to, and more complete than, Western's spare parts proposal. Notwithstanding the considered superiority of Magnavox's spare parts, the committee noted that Magnavox had omitted three spare parts which were present in Western's proposal. The committee further concluded that if either Magnavox or Western received an award, Interior would accept all spares offered by either offeror. (Interior asserts that its committee's conclusion shows compliance with the RFP's provision requiring the Department to determine prior to award which spare parts would be purchased.)

By separate memo also dated June 25, 1975, Interior's technical committee submitted a "recommended" list of spare parts which the committee apparently felt should be purchased regardless of the identity of the concern supplying the basic system. In response to the contracting officer's question as to whether all offerors could be requested to "propose against the recommended spare parts list," the chairman of the committee advised that, although this request "might be feasible," the request "would in all probability be prejudicial to either or both offerors based on * * * knowledge of [the offerors'] respective 'make or buy' programs and the stated requirement of the solicitation."

We understand that the "prejudice" that was felt would arise from requiring offerors to submit prices on the committee's recommended parts list partially related to Western's need to purchase several spare parts from Magnavox, in order to propose completely on the list, and to Interior's apparent feeling that Western would be placed in an untenable competitive position because of this need. The prejudice stemming from the "stated requirements of the solicitation" apparently related to the RFP's direction that offerors propose their own recommended list of spare parts. Since Western's own spare parts proposal was less inclusive when compared to the Department's recommended spare parts list than Magnavox's proposal (although Magnavox would also have to add some spares to its proposal in order to respond to the committee's recommended list), Western would be "prejudiced" by having to price several spare parts that it had not originally contemplated on pricing.

The upshot of the foregoing analysis was that offerors were not requested to submit revised offers on the technical committee's recommended spare parts list. Because Western's proposal, including spare parts, was considered technically acceptable, the contracting officer decided to make award to Western because he did not believe the merit of Magnavox's technically superior offer offset the monetary advantage (a savings of \$47,491) present in Western's lower-priced offer. Award was thereafter made to Western. (Interior reports that Western has recently completed the contract.)

We agree with Interior that the RFP required offerors to propose what they considered to be spare parts sufficient for their respective systems. We do not read the RFP as necessarily requiring a "maximum" number of spare parts, as Magnavox contends. We further agree that since Interior initially decided that it would need all of Magnavox's spare parts--in the event an award were to be made to the concern--the Department was not obligated under its initial decision to afford Magnavox the opportunity to reduce its number of spare parts.

What is not clear from the record before us is whether, as a result of the technical committee's subsequent issuance of its recommended spare parts list, Magnavox should have been afforded an opportunity to revise its spare parts list--perhaps by reducing, in the main, the total number of its originally offered parts to the number of parts required on the committee's recommended list. Of course, Magnavox needed to add three spare parts to its original list to fully respond to the Department's recommended list, but

the overall effect would have apparently been a reduction in the number of offered parts. If Magnavox should have been given this opportunity, it is also clear that Western should have been required to price all spare parts on the committee's spare parts recommended list if, as seems to be the case, its original spare proposal did not contain all parts present on the recommended list.

Part of the difficulty in reaching this decision is that the Department's final acceptance of Western's proposal with its original number of spare parts gives the impression that Western's original spare parts offer satisfied the Department's reasonable needs for spare parts. On the other hand, the June 25 memo containing the committee's "recommended" spare parts list gives the impression that the recommended list of spare parts represented the Department's reasonable needs for spares.

We are inclined to the view that the list of spares in the awarded contract represents the Department's reasonable needs. Consequently, we cannot criticize the contracting officer's decision not to amend the RFP to require offerors to submit spare parts proposals based on the committee's list of recommended spare parts.

Thus, the final award decision reflects Interior's view that the advantages in Magnavox's technically superior, higher-priced proposal simply did not outweigh the monetary savings inherent in Western's proposal. Usually, a lower-priced, lower-scored acceptable offer is for acceptance unless--unlike the case here--the procuring agency specifically determines that acceptance of the higher-priced, higher-scored offer is warranted. 51 Comp. Gen. 153, 161 (1971). Based on our review of the record, we cannot conclude that Interior's selection of Western's proposal, including its spare parts offer, is not rationally founded.

Finally, Magnavox complains about the time (approximately 4 months) which Interior took to submit a report on the protest. Critical comment is also made concerning the Department's alleged refusal to enter into discussions with the company concerning the issues raised in the protest.

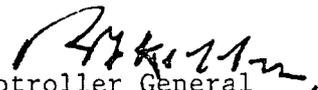
By supplemental report dated December 12, 1975, the Department advised us that at least part of the delay in preparing a report was due to the contracting officer's impression that there was a strong possibility that Magnavox might withdraw its protest--thus obviating the need for preparing a report. The contracting officer further advises that Magnavox was aware that a report was not being prepared

B-184433

during the time that the contracting officer was trying to determine whether Magnavox would withdraw its protest. Further, the contracting officer states that he was advised that a meeting on the protest would be considered "highly irregular until after the agency's protest report had been submitted to GAO."

We have recognized that we are without authority to require a contracting agency to submit a protest report to our Office by a given date. See AMF Incorporated Electrical Products Group, 54 Comp. Gen. 978, 987 (1975), 75-1 CPD 318. Consequently, we are unable to conclude that the time taken for submitting a report here affects the propriety of the award. Neither can we conclude that the Department's refusal to confer with Magnavox affects the propriety of the award even though a conference between Interior officials and Magnavox might have clarified the issues raised by the protest.

Protest denied.


Deputy Comptroller General
of the United States